

SUPERIOR COURT
OF THE
STATE OF DELAWARE

T. HENLEY GRAVES
RESIDENT JUDGE

SUSSEX COUNTY COURTHOUSE
ONE THE CIRCLE, SUITE 2
GEORGETOWN, DE 19947

August 6, 2009

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**RE: Caldera Properties v. The Ridings Development, LLC, et al.
Civil Action No. 07C-12-002**

Dear Counsel:

This Motion for a Charging Lien became ripe for decision upon the remand from the Supreme Court to resolve post-trial ancillary motions. The decision of this Court and return to the Supreme Court must be accomplished prior to August 24, 2009.

Kaplin, Steward, Meloff, Reiter and Stein, P.C. (“Kaplin Steward”) represented Plaintiff in this case.

As a part of my decision of May 29, 2009, I awarded Plaintiff prejudgment interest on a Two Million Dollar (\$2,000,000.00) mortgage that Defendants, Ridings and Centex, did not timely satisfy. This mortgage was not on the real property that was at issue in the litigation but on another property. This mortgage was to protect Defendants if Plaintiff defaulted on the contract. The prejudgment interest has been calculated to be \$214,772.80 and I entered judgment on same on August 5, 2009.

Subsequent to my decision, RBS Citizens, N.A. (“RBS”) filed a writ seeking to attach the prejudgment interest award. RBS obtained a stipulated judgment on April 1, 2009 against Plaintiff involving the property that was the subject of this litigation.

Kaplin Steward has filed a motion seeking an attorneys’ charging lien against the prejudgment interest award for its representation of Plaintiff in which Plaintiff substantially prevailed in the litigation including the prejudgment interest award. *Royal Ins. V. Simon*, 174 A.2d 444 (Del. Ch. 1934); *Polin v. Delmarva*

Poultry Corp., 188 A.2d 364 (Del. Super 1963). Plaintiff has not filed any objection to its attorneys' application.

The Court's decision significantly increased the value of the subject real property; and, therefore, the decision also significantly benefitted RBS as to its mortgage on the subject property.

But for the litigation and efforts of Kaplin Steward, the prejudgment interest award now owed by Ridings and Centex would not exist.

As a party to the litigation, RBS was fully aware of the litigation and Kaplin Steward's significant work which benefitted not only Plaintiff but also RBS. RBS was also aware of the financial plight of Plaintiff based upon not only the subject matter of the litigation but also the direct communications and negotiations with Plaintiff as to the indebtedness to RBS.

It is important to repeat that RBS benefitted significantly in the protection of its collateral by the work of Kaplin Steward, and RBS had knowledge of the financial circumstances of Plaintiff. RBS was represented and could have reasonably predicted that Plaintiff's counsel would try to protect itself with a charging lien.

On May 29, 2009, the prejudgment interest was awarded and it became ripe for a charging lien. The writ of attachment fieri facias was filed by RBS on or about June 10, 2009. In other words, RBS was secured by its mortgage and judgment as to the subject property, but its "interest" in the prejudgment interest award was not an automatic lien. The writ was necessary to attach the prejudgment interest.

Therefore, based upon the above, it is fair, equitable and appropriate that a charging lien be recognized in favor of Kaplin Steward as to the May 29, 2009 prejudgment interest award.

IT IS SO ORDERED.

Yours very truly,

/s/ T. Henley Graves

T. Henley Graves

THG:baj

cc: Prothonotary
Gerald M. Rourke, Esquire
Deborah J. Israel, Esquire and Cathy A. Hinger, Esquire
Daniel F. Wolcott, Jr., Esquire and Gregory A. Inskip, Esquire
William A. Denman, Esquire
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